

1 Robert A. Mittelstaedt (State Bar No. 60359)
2 ramittelstaedt@jonesday.com
3 Craig A. Waldman (State Bar No. 229943)
4 cwaldman@jonesday.com
5 David C. Kiernan (State Bar No. 215335)
6 dkiernan@jonesday.com
7 Lin W. Kahn (State Bar No. 261387)
8 linkahn@jonesday.com
9 JONES DAY
10 555 California Street, 26th Floor
11 San Francisco, CA 94104
12 Telephone: (415) 626-3939
13 Facsimile: (415) 875-5700

8 Attorneys for Defendant
9 Adobe Systems Inc.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
12

13 IN RE: HIGH-TECH EMPLOYEE
14 ANTITRUST LITIGATION

15 THIS DOCUMENT RELATES TO:
16 ALL ACTIONS
17
18
19

Master Docket No. 11-CV-2509-LHK

**DECLARATION OF LIN W. KAHN
IN SUPPORT OF DEFENDANTS'
JOINT RESPONSE TO PLAINTIFFS'
ADMINISTRATIVE MOTION TO
FILE UNDER SEAL**

Date Consolidated Amended Compl. Filed:
September 13, 2011

1 I, Lin Wang Kahn, declare as follows:

2 1. I am an attorney with the law firm of Jones Day, counsel for Defendant Adobe
3 Systems Inc. ("Adobe") in the above-captioned action. I am admitted to practice law before this
4 Court. I submit this declaration in support of Defendants' Joint Response to Plaintiffs'
5 Administrative Motion to File Under Seal Plaintiffs' Reply in Support of Supplemental Motion in
6 Support of Class Certification and related documents. As an attorney involved in the defense of
7 this action, unless otherwise stated, I have personal knowledge of the facts stated in this
8 declaration and if called as a witness, I could and would competently testify to them.

9 2. I have reviewed Plaintiffs' Reply in Support of Supplemental Class Certification
10 Motion ("Reply"), the Rebuttal Supplemental Expert Report of Edward E. Leamer, Ph.D.
11 ("Leamer Report") and supporting appendices and exhibits, and documents attached to the
12 Declaration of Anne B. Shaver in Support of Plaintiffs' Reply in Support of Supplemental Class
13 Certification Motion.

14 3. As described below, the information requested to be sealed contains or
15 summarizes Adobe's compensation and recruiting data, practices, strategies and policies. Adobe
16 has designated this information as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant
17 to the Protective Order in this case. (Dkt. No. 107).

18 4. The October 9, 2012 Declaration of Donna Morris In Support of Defendants' Joint
19 Response to Plaintiffs' Administrative Motion to File Under Seal (Dkt. No. 196) ("10/9/2012
20 Morris Decl.") establishes that Adobe's compensation data, practices, strategies and policies, as
21 well as its recruiting data, practices, strategies and policies are confidential and commercially
22 sensitive. As stated in the 10/9/2012 Morris Decl., it is Adobe's practice to keep such
23 information confidential, for internal use only, and not to disclose them to the public.

24 5. Moreover, the 10/9/2012 Morris Decl. establishes that the public disclosure of this
25 information would harm Adobe, including potentially impairing its competitive position in
26 recruiting, hiring, and compensating employees. Morris declared that Adobe derives independent
27 economic value from keeping its compensation data and compensation, recruiting and hiring
28 practices, strategies, and policies confidential, including keeping it from other persons and entities

1 who could obtain economic value from its disclosure or use.

2 6. Furthermore, as noted by Morris in the 10/9/2012 Morris Decl., the public
3 disclosure of this information, created for internal use, would give third-parties insights into
4 confidential and sensitive aspects of Adobe's operations and deprive Adobe of its investment in
5 developing these practices, strategies, and policies. The declaration further establishes that such
6 disclosure would give other entities an unearned advantage by giving them the benefit of knowing
7 how Adobe compensates employees and Adobe's compensation, recruiting, and hiring practices,
8 strategies, and policies.

9 7. In addition to the 10/9/2012 Morris Decl., Adobe's declarations filed in support of
10 the Opposition to Plaintiffs' Motion for Class Certification also establish the confidentiality of
11 Adobe's compensation and recruiting data, practices, strategies and policies. In particular, the
12 Declaration of Donna Morris of Adobe Systems Inc. in Support of the Opposition to Plaintiffs'
13 Motion for Class Certification (Dkt. No. 215, Exhibit 14) ("11/9/2012 Morris Decl."), paragraph
14 3, establishes that Adobe's salary and compensation data, policies and strategies are confidential
15 and that public dissemination of that information could cause Adobe competitive harm. The
16 Declaration of Jeff Vijungco of Adobe Systems Inc. in Support of the Opposition to Plaintiffs'
17 Motion for Class Certification (Dkt. No. 215, Exhibit 15) ("Vijungco Decl."), paragraph 3,
18 similarly establishes that Adobe's recruiting and hiring data, policies and strategies are
19 confidential and that public dissemination of that information could cause Adobe competitive
20 harm.

21 8. The confidentiality of this type of information was confirmed recently by the
22 January 21, 2013 Declaration of Donna Morris in Support of Renewed Motion to Seal (Dkt. No.
23 284).

24 9. Specifically, Adobe seeks to keep the following redacted portions of the **Reply**
25 under seal:

26 • Page 12, lines 9-10 contains confidential information about how Adobe
27 determines employee compensation. This is internal confidential Adobe information that directly
28 relates to Adobe's compensation strategies and practices.

1 • Page 12, line 25, to page 13, line 4 contains confidential information about
2 how Adobe determines employee compensation. This is internal confidential Adobe information
3 that directly relates to Adobe's compensation strategies and practices.

4 10. Adobe also seeks to keep the following redacted portions of exhibits to the **Shaver**
5 **Declaration** under seal:

6 • Redacted portion of Exhibit A, excerpts from the deposition of Adobe witness
7 Rosemary Arriada-Keiper, at 23:4-21; 23:24-25; 24:2-25:6; 68:7-21; 69:2-11; 69:15-24; 70:25-
8 71:2; 71:19-20; 163:23-165:25; 198:8-199:11; 201:1-4; 206:1-5; 207:2-208:5; and 208:23-
9 209:16. These excerpts contain internal confidential Adobe information that directly relates to
10 Adobe's compensation and recruiting strategies and practices. This is confidential Adobe
11 information that pertains to Adobe's compensation and employee management practices.

12 • Redacted portion of Exhibit D, excerpts from the deposition of Adobe witness
13 Donna Morris, at 140:9-13; 140:16-18; 141:20-22; 142:3-4; 142:9-11; 143:3; 143:11; and 143:15-
14 16. These excerpts contain personally identifying information about Adobe employees,
15 confidential information about Adobe's job titles, and internal confidential Adobe information
16 that directly relates to Adobe's compensation and recruiting strategies and practices. This is
17 confidential Adobe information that pertains to Adobe's compensation, employee management,
18 and hiring practices.

19 • Redacted portion of Exhibit L, excerpts from the deposition of Plaintiffs'
20 expert witness Kevin Hallock, at 87:9; 87:11; 87:13; 87:21; 177:18; 178:8; 178:13; 178:14;
21 178:17; 184:10; 192:13; 193:25; 203:4; 203:9; 203:12; 243:2; 260:18; 260:19; 260:20; 260:21;
22 262:1; 262:3; and 262:5. These excerpts contain personally identifying information about Adobe
23 employees and internal confidential Adobe information that directly relates to Adobe's
24 compensation strategies and practices. This is confidential Adobe information that pertains to
25 Adobe's compensation, employee management, and hiring practices.

26 11. Moreover, Adobe seeks to keep the following redacted portions of the **Leamer**
27 **Report** under seal:

28 • Page 34, Figure 6 contains confidential information about Adobe's

1 compensation data. This is internal confidential Adobe information that directly relates to
2 Adobe's compensation strategies and practices.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct. Executed this 19th day of July 2013 in San Francisco, California.

5
6
7 By: /s/ Lin W. Kahn

Lin W. Kahn